

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

KH PONDS LLLP,

Appellant,

vs.

DORCHESTER COUNTY, A
POLITICAL SUBDIVISION OF THE
STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No. 2021-CP-18-02199

Case No. 2021-CP-18-02064

Case No. 2021-CP-18-01877

Case No. 2022-CP-18-00196

MEDIATION SETTLEMENT
AGREEMENT

On October 26, 2021, December 1, 2021, and December 21, 2021, KH Ponds ("Appellant") filed appeals against Dorchester County Planning Board, a/k/a Dorchester County Planning Commission (Respondent), pursuant to S.C. Code Ann. §6-29-1150, *et seq.*, in which Appellant requested pre-litigation mediation, pursuant to §6-29-1155.

Appellant and Respondent (collectively, the "Parties") mutually selected John A. Massalon, Esquire to serve as the mediator for the mandatory pre-litigation mediation.

The mandatory pre-litigation mediation was held on January 11, 2022, and January 12, 2022, which sessions resulted in an agreement. Pursuant to S.C. Code §6-29-1155(D), that agreement was presented to Dorchester County Council for approval. Dorchester County Council took no action pursuant to the agreement. Representatives of Appellant and of Respondent resumed negotiations, pursuant to all rules and guidelines applicable to a mediation conducted in accordance with the South Carolina Alternative Dispute Resolution (ADR) Rules. The parties have reached agreement, as more fully set forth in this Mediation Settlement Agreement ("Settlement Agreement") by and between the Parties, to work together, expediently and in good faith, to draft an

amendment to the Development Agreement entered into by and between Dorchester County and Greenwood Development Corporation and recorded in the office of the Register of Deeds for Dorchester County in Book 5100, Page 001 ("DA"), the rights and obligations of Greenwood Development thereunder, having been assigned to Appellant by the Assignment and Assumption of Development Agreement (the "Assignment") and to expediently and in good faith draft a corresponding amendment to the PD Zoning attached to and made a part of the DA, as necessary, to effectuate the following terms:

1. Respondent will identify Schultz Lake, Village Pond, and Simmons Ponds as publicly accessible which will be accessed via natural, public trails, as shown on the attached Land Use Exhibit¹("Exhibit A"). Appellant will install an unpaved, pedestrian accessible kayak launch, as more clearly depicted on the attached Exhibit A, in the general area of which two (2) picnic table(s) will be placed, adjacent to Schultz Lake. All such improvements in the area of Schultz Lake are subject to and contingent upon the approval of the U.S. Army Corps of Engineers and the South Carolina Department of Health and Environmental Control, both of which may have regulatory authority over such area.

2. Appellant will construct a road, built to County standards for the construction of Pottery Circle which will connect Pottery Circle to the existing County- maintained Schultz Lake Road and install a gate at the property line adjacent to and bordering Schultz Lake Road with a locking system solely for the use of and by Dorchester County for public

¹ The Exhibit, as referenced herein, consists of two pages, and is entitled Land Use Exhibit The Ponds, dated January 19, 2022, and prepared by Thomas & Hutton.

safety purposes. This road will be constructed prior to final plat approval of Phase 10, addressed below.

3. The Cultural and Social lands identified on the attached Exhibit A, shall satisfy the requirements for Cultural and Social Lands, and, as depicted on the attached Exhibit A, are in compliance with the definition of Civic Use as defined in the DA and/or the PD Zoning.

4. Appellant will confirm the availability of electrical service of sufficient capacity, to be available for the use of independent food truck vendors, in or near the area designated as Amenity Center, on the attached Exhibit A.

5. Appellant shall designate approximately 1.8 acres (approximate) (TMS No. 151-00-00-115) shown on the Exhibit A as Future Commercial, for future commercial use, to be determined. This shall satisfy the "Village Center" component of the PD.

6. Appellant shall designate approximately six (6) acres within the area shown on the attached Exhibit B as Multi-Use Fields, which will be comprised to two (2) fields that Appellant will clear, grade, and sod in conjunction with the installation of Phase 10 infrastructure and complete prior to final plat approval of Phase 10 to be constructed in accordance with Subparagraph a. below. Appellant shall designate approximately 0.87 acres as shown on the attached Exhibit B as Additional Acreage for Future Parking that Appellant will clear, grade, and sod in conjunction with the installation of Phase 10

Infrastructure and complete prior to final plat approval of Phase 10. Appellant shall convey the areas comprised of the Multi-Use fields and Additional Acreage for Future Parking to Dorchester County within thirty (30) days of recordation of the final plat for Phase 10 in the office of the Register of Deeds for Dorchester County.

a. Multi-Use Fields

i. Appellant agrees to install proper in ground field irrigation for both fields for use in an athletic field.

ii. Appellant agrees to construct the multi-purpose fields as follows: The two fields will be crowned along the length wise center line of each field and graded to a slope of 1% to 1.5% sloping toward the long edges of each field. The two fields will be constructed utilizing 4 inches of sand to cap the fields: two inches of sand will be blended into the soil and the other two inches shall be applied to the top to form the final grade of 1% to 1.5%.

iii. Appellant agrees to sod with TifTuf Bermuda grass.

iv. Appellant shall install two-inch PVC conduit to the proposed lighting pole locations as shown in Exhibit C. The conduit will run from a central box location near the center of the two fields near the parking area, with the box being located at least 25 feet from the fields. There shall be eight conduits installed with one conduit for each of the four exterior pole locations and two each to the two interior pole locations for a total of eight conduits.

7. The DA/PD Zoning will be amended such to allow Appellant to proceed with improvement of the 6,000 to 7,499 square foot lots currently shown on the proposed

Preliminary Plats for Phases 6B, 8, and 9 as well as all previously approved preliminary plats, including but not limited to the Phase 6 plat. In addition, the overall allowed density for the development shall be increased from a total of 1,950 units to 2,000 dwelling units, which includes the Townhomes described below.

8. Appellant commits to providing 74 Townhomes in the areas shown as Future Townhome Development on the attached Exhibit A and Exhibit B. Appellant will submit a Phase 10 preliminary plat for the Townhomes, the School Site, and the Multi-Use fields set forth above in accordance with the attached Exhibit A, Exhibit B, and Exhibit C. The Phase 10 preliminary plat must be submitted to Respondent and all infrastructure required by the approved preliminary plat for Phase 10 shall be installed prior to approval by Respondent of Phase 8 final plat. There shall be no requirement for multi-family units, and the amended DA/PD Zoning will so reflect the elimination of any requirement for multi-family units.

9. Publicly accessible, natural trails, consisting of approximately ten (10) miles will be installed consistent with "Walking Trails," as depicted on the Exhibit A. In addition, the existing trails around the ponds located in Phases 8 and 9 shall be retained, as modified and as shown on the Exhibit A. Respondent acknowledges and agrees that in order for Appellant to install the above trails, a reduction in the 35' trail setback is required in some areas, designated on the attached Exhibit A in blue, and the PD Zoning will be amended to reflect such reduction, but in no event shall the setback be reduced to less than 20'. The Rear Setback on trails is measured from the property line. Provided the PD Zoning

is amended to so reduce the setback, all trails described herein shall be retained, constructed, and/or improved, as the case may be, and publicly accessible prior to approval of the final plat for Phase 8. The trails depicted on the attached Exhibit A comprise and constitute all trails required, suggested, or otherwise conceptualized in the DA and/or PD Zoning. All trails must, at a minimum, be natural and of the same quality and construction to accommodate hiking, running, and biking. Trails in the Conservancy area and/or adjoining property, shall be publicly accessed by an existing road on adjoining lands shown on the attached Exhibit A. Appellant shall be responsible for providing legal access to these trails. Appellant shall secure a letter from Conservancy that states the trails are in conformity with the covenants and restrictions.

Respondent expressly acknowledges that certain setbacks may be associated with a property or properties owned by an individual or entity other than Appellant, and as to those setbacks, the County also expressly acknowledges they cannot be lessened or otherwise modified by Appellant.

10. Appellant will convey the School Site, as shown on the Exhibit A hereto, to Dorchester County as part of the Social and Cultural/Civic use within thirty (30) days following recordation of the final plat for Phase 10.

11. Road Close-Out/Pipe Video: Prior to the submission of road for acceptance by the County, Appellant agrees to video the storm water drainage pipes for Phases 6, 6B, 7, 8, 9, and 10 and repair any deficiencies revealed by said video prior to Respondent's

acceptance of such roads within these phases. Road will be accepted in accordance with Dorchester County's normal acceptance procedures in effect on the date of this agreement. For all remaining roads not already accepted by the County, Appellant will provide a warranty of three (3) years for the storm water drainage facilities, which will commence upon acceptance of the respective roads by Dorchester County.

12. Respondent will submit this Agreement for inclusion on the April 18, 2022, Dorchester County Council Meeting Agenda. Provided County Council and the Circuit Court approves the settlement agreement, as anticipated in S.C. Code §6-29-1155, the ordinances and public hearings required to approve the amendments to the PD Zoning and DA shall be held as expeditiously as possible, and assuming final approval by County Council, the DA and accompanying PD shall be immediately thereafter modified as set forth herein.

13. Upon approval by Dorchester County Council of the amended DA and/or PD Zoning, consistent with the terms hereof, and the proper recordation of the Amended DA and/or PD Zoning, the appeals, as above captioned, shall be dismissed by and on behalf of Appellant.

14. Appellant and Respondent will each use good faith efforts to meet the terms and conditions of this Settlement Agreement. No approval of any future submittal by or on behalf of Appellant, relative to the subject project, the DA and the PD Zoning, as modified, shall be unreasonably withheld.

15. Upon approval of this Settlement Agreement by Dorchester County Council, and the Circuit Court for the First Judicial Circuit of South Carolina, Appellant agrees that it will not assert any claim against Respondent, its officers, officials, agents, or employees, for any damages occasioned by any delays to Appellant's development, and/or occasioned by the actions of the Respondent or Planning Commission as to any such delays or action that have occurred as of the date Dorchester County Council and the Circuit Court approve this Settlement Agreement. This does not and shall not affect any potential claims against Respondent, its officers, officials, agents or employees for any damages occasioned by any delays to Appellant's development and/or occasioned by the actions of the Respondent or Planning Commission after the date of approval of this Settlement Agreement by County Council and by the Circuit Court.

KH PONDS LLLP

BY: USM

ITS: Authorized Signator

- AND -

Cheryl Shuman
ATTORNEY FOR KH PONDS LLLP

DORCHESTER COUNTY, A POLITICAL
SUBDIVISION OF THE
STATE OF SOUTH CAROLINA

BY: 

ITS: Administrator

AND


ATTORNEY FOR DORCHESTER COUNTY, A
POLITICAL SUBDIVISION OF THE STATE OF
SOUTH CAROLINA

April 20, 2022





